UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

EUGENE TOWNSEND,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Civil No. 96-19-B***
	)	
SHIRLEY S. CHATER,	***)***	
Commissioner of Social Security,	***)***	
	)	
Defendant	***)***	

REPORT AND RECOMMENDED DECISION[1]

This Supplemental Security Income ("SSI") appeal raises the issue of whether there is substantial evidence in the record supporting the Commissioner's determination that the plaintiff is able to perform jobs that exist in significant numbers in the national economy, in light of the plaintiff's assertion that he has limited use of his right wrist. I recommend that the court affirm the decision of the Commissioner.

In accordance with the Commissioner's sequential evaluation process, 20 C.F.R. §§ 416.920; *Goodermote v. Secretary of Health & Human Servs*., 690 F.2d 5, 6 (1st Cir. 1982), the Administrative Law Judge found, in relevant part, that the plaintiff had not engaged in substantial gainful activity since July 5, 1994, Finding 1, Record p. 23; that he suffers from the residual effects

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[1] This action is properly brought under 42 U.S.C. § 1383(c)(3). The Commissioner has admitted that the plaintiff has exhausted his administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 26, which requires the plaintiff to file an itemized statement of the specific errors upon which he seeks reversal of the Commissioner's decision and to complete and file a fact sheet available at the Clerk's Office. Oral argument was held before me on December 9, 1996 pursuant to Local Rule 26(b) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority and page references to the administrative record.

of a below-the-knee amputation of the right lower extremity, performed in 1977, an impairment that does not meet or equal any of those listed in Appendix 1 to Subpart P, 20 C.F.R. § 404, Findings 2 and 4, Record pp. 23, 24; that he suffers from no other medically determinable impairment, Finding 3, Record. p. 23; that his residual functional capacity for work is limited to activity of a light or sedentary exertional level, with walking limited to no more than 30 to 45 minutes at a time, Finding 7, Record p. 24; that, to the extent the plaintiff's testimony is at variance with the foregoing, it is not credible in light of the medical evidence of record and the plaintiff's description of his daily activities, Finding 8, Record p. 24; that the plaintiff is unable to return to his past relevant work as a truck driver, Finding 9, Record p. 24; that, despite these findings, he is capable of making an adjustment to jobs that exist in significant numbers in the national economy, including the jobs of machine operator, ticketer, tool crib attendant, certain positions in the boot and shoe industry, and cashier II, Finding 10, Record p. 24; and that, therefore, the plaintiff was not under a disability at any time prior to the Administrative Law Judge's decision on March 28, 1995, Finding 11, Record p. 25. The Appeals Council declined to review the decision, Record pp. 4-5, making it the final determination of the Commissioner, 20 C.F.R. § 416.1481; *Dupuis v. Secretary of Health & Human Servs*., 869 F.2d 622, 623 (1st Cir. 1989).

The standard of review of the Commissioner's decision is whether the determination made is supported by substantial evidence. 42 U.S.C. § 1383(c)(3); *Manso-Pizarro v. Secretary of Health & Human Servs*., 76 F.3d 15, 16 (1st Cir. 1996). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusions drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

In making his finding that there are jobs in the national economy capable of being performed by the plaintiff, the Administrative Law Judge relied on the testimony of a vocational expert. In the hypothetical query, the Administrative Law Judge instructed the vocational expert to assume that the plaintiff's impairments limited him to "light work without too much standing and walking." Record p. 51. The vocational expert responded by listing, as existing in significant numbers, the jobs referred to above. He also referred to "hundreds of jobs," in a variety of categories not cited by the Administrative Law Judge, when asked to shift the hypothetical to a residual functional capacity for sedentary work. *Id.* at 53. Asked whether an inability to make repetitive use of the right hand would affect his response, the vocational expert indicated that all of the jobs he listed would, in fact, require such a capacity. *Id.* at 52-53 (concerning light work), 53-54 (concerning sedentary work).

Noting this colloquy, the plaintiff contends that the finding of no disability is flawed because the Administrative Law Judge was compelled to find, on the record presented, that the plaintiff is, in fact, unable to make repetitive use of his right wrist.

> [I]n order for a vocational expert's answer to a hypothetical question to be relevant, the inputs into that hypothetical must correspond to conclusions that are supported by the outputs from the medical authorities. To guarantee that correspondence, the Administrative Law Judge must both clarify the outputs (deciding which testimony will be credited and resolving ambiguities), and accurately transmit the clarified output to the expert in the form of assumptions.

Arocho v. Secretary of Health & Human Servs., 670 F.2d 374, 375 (1st Cir. 1982).

In support of his contention that the "inputs" relied upon here do not appropriately correspond to the "outputs" generated by the medical evidence of record, the plaintiff makes reference to medical records dating from 1977 that show he suffered a fractured right ulna in the same accident that led to his amputation, Record pp. 148, 150, and showed signs of "an old healed

fracture of the distal radius,"[2] *id.* at 155. The plaintiff also notes that when he was treated at an emergency room in January 1995 for a swollen right wrist the attending physician made a note referring to the distal radius of that arm. *Id.* at 229. Therefore, the plaintiff contends, the Administrative Law Judge erred in rejecting his testimony that his wrist causes him pain every time he moves it. Record p. 46. The plaintiff asserts that he suffers from arthritis.

Generally, an Administrative Law Judge is not qualified to interpret "raw data" in a medical record. *Manso-Pizarro*, 76 F.3d at 17. However, "where the medical evidence shows relatively little physical impairment," the Administrative Law Judge "can render a commonsense judgment about functional capacity even without a physician's assessment." *Id.* In this regard, the Administrative Law Judge in the instant case duly noted the lack of any diagnosis in connection with the 1995 emergency room visit, and reached a commonsense conclusion that 18-year-old evidence of bone fractures cannot, without something more in the way of more recent diagnosis, comprise medical evidence of a wrist impairment. It is, after all, a "primary requirement" for a finding of disability under the Social Security Act that there be a "clinically determinable medical impairment that can reasonably be expected to produce the pain alleged." *Avery v. Secretary of Health & Human Servs.*, 797 F.2d 19, 21 (1st Cir. 1986). Concerning a claimant's allegations of pain, "[t]he credibility determination by the [Administrative Law Judge], who observed the claimant, evaluated his demeanor, and considered how the testimony fit in with the rest of the evidence, is entitled to deference, especially when supported by specific findings." *Frustaglia v. Secretary of Health & Human Servs.*, 829 F.2d 192, 195 (1st Cir. 1987). Given the lack of evidence concerning a medically

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[2] The ulna and the radius are the two principal bones of the forearm, between the wrist and the elbow. *See Taber's Cyclopedic Medical Dictionary* (1981) at 1217, 1506, 1579.

determinable impairment to the plaintiff's wrist, there is no basis for disturbing the Administrative Law Judge's determination that the plaintiff's allegations concerning his wrist are not credible. Wrist impairment was therefore properly excluded from the hypothetical posed to the vocational expert.

The plaintiff further contends that the hypothetical was also flawed because the Administrative Law Judge qualified the ability to perform light work with a limitation on walking and standing. According to the plaintiff, such a qualification is inconsistent with the definition of light work in the regulations. This contention is without merit. Light work

> involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities.

20 C.F.R. § 416.967(b). It is plain from this definition that, while some light work requires a "good deal of walking or standing," not every job that is classified as light work involves that kind of physical exertion.

Accordingly, I recommend that the decision of the Commissioner be **AFFIRMED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 11th day of December, 1996.

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David M. Cohen
United States Magistrate Judge